

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-110318-19
Date:
October 29, 2019

Legend

X =

Country =

Currency =

Date =

Dear :

This letter responds to a letter dated April 23, 2019, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling that gain recognized under section 987 constitutes qualifying income within the meaning of § 7704(d) of the Internal Revenue Code ("Code").

FACTS

According to the information submitted, X is a limited partnership formed under the laws of Country on Date. X was formed for the purpose of making investments in privately held companies ("Portfolio Companies"). The Portfolio Companies are classified as corporations for federal income tax purposes. For a variety of business reasons, X regularly invests in the Portfolio Companies indirectly through other entities treated as partnerships or disregarded entities for federal income tax purposes ("Holding Companies"). X and the Holding Companies do not engage in active trades or businesses. Instead, X's and the Holding Companies' sole activity is to passively

invest in Portfolio Companies, either directly or indirectly through one or more Holding Companies.

X's functional currency is Currency. However, because X invests on a global basis, it is not unusual for X to invest in a Portfolio Company through a Holding Company with a functional currency other than Currency. Accordingly, X may recognize gain under § 987 of the Code when X receives distributions from Holding Companies treated as partnerships, due to exchange rate fluctuations between X's functional currency and the Holding Companies' functional currency ("§ 987 gain"). X seeks a ruling that this § 987 gain will be qualifying income for purposes of § 7704(d) of the Code.

LAW AND ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership shall be treated as a corporation.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradeable on a secondary market (or a substantial equivalent thereof).

Section 7704(c)(1) provides that § 7704(a) shall not apply to any publicly traded partnership for any taxable year if such partnership meets the gross income requirements of § 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirement of § 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(d)(4) provides that the term "qualifying income" includes any income that would qualify under § 851(b)(2)(A) (relating to a gross income test for regulated investment companies) or § 856(c)(2) (relating to a gross income test for real estate investment trusts).

Section 851(b)(2)(A) provides that a corporation shall not be considered a regulated investment company unless at least 90 percent of its gross income is derived from dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in § 2(a)(36) of the Investment Company Act of 1940 [15 USC § 80a-2], as amended) or foreign currencies, or other income (including but not limited to gains from

options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies.

Section 987 provides that, in the case of any taxpayer having one or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined (1) by computing the taxable income or loss separately for each such unit in its functional currency, (2) by translating the income or loss separately computed under § 987(1) at the appropriate exchange rate, and (3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including (A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and (B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

Section 989 provides that, for purposes of subpart J of part III of subchapter N of Chapter 1 of Subtitle A of the Code, the term “qualified business unit” means any separate and clearly identified unity of a trade or business which maintains separate books and records.

Section 1.989(a)-1(b)(2)(i)(C) provides that, subject to certain exceptions, a partnership is a qualified business unit.

CONCLUSION

Based solely upon the facts submitted and the representations made, including X’s representations that all of the Portfolio Companies of X are corporations for federal tax purposes and that X uses its Holding Companies solely as passive conduits to invest in the debt and equity of X’s Portfolio Companies, we conclude X’s § 987 gain is “other income” derived with respect to X’s business of investing in stock or securities within the meaning of § 851(b)(2)(A). Accordingly, based solely on the facts as submitted and the representations made, we conclude that X’s § 987 gains constitute qualifying income under § 7704(d)(4).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

Sincerely,

Adrienne M. Mikolachek
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: